

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

GUITAR APPRENTICE, INC.

Plaintiff,

vs.

UBISOFT, INC.

Defendant.

No.: _____

Judge _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Guitar Apprentice, Inc. (“Guitar Apprentice”) files this Complaint for patent infringement and injunction against Ubisoft, Inc. (“Ubisoft”), stating as follows:

THE PARTIES

1. Guitar Apprentice is a corporation organized and existing under the laws of the State of Delaware, having its principal place of business at 2510 Franklin Pike, 2nd Floor, Nashville, Tennessee 37204.

2. Upon information and belief, Ubisoft, Inc. is a corporation organized and existing under the laws of the state of California with its principal place of business at 625 Third Street, 3rd Floor, San Francisco, California 94107. Upon information and belief, process may be served on Ubisoft, Inc. by serving its registered agent at 625 Third Street, 3rd Floor, San Francisco, California 94107.

JURISDICTION AND VENUE

3. This Complaint for patent infringement arises under the patent laws of the United

States, Title 35, United States Code, and this Court has jurisdiction over those claims pursuant to 28 U.S.C. § 1338, which directs that district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, and pursuant to 28 U.S.C. § 1331, which grants jurisdiction to district courts over all civil actions arising under the Constitution or laws of the United States. In the alternative, this Court has jurisdiction pursuant to 28 U.S.C. 1332 because the matter in controversy exceeds \$75,000 and involves parties residing in different states.

4. This Court has personal jurisdiction over Ubisoft as Ubisoft has purposefully directed its activities at residents of this state, and the claim arises out of or relates to those activities. Among other activities, Ubisoft offers the infringing product at Walmart® stores throughout this District.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 because a substantial part of the events giving rise to this patent infringement action occurred in this judicial district, and Ubisoft is committing and will continue to commit acts of infringement in this judicial district.

FACTUAL BACKGROUND

Guitar Apprentice's Patented Technology

6. On November 19, 2013, United States Patent Number 8,586,849 (“the ’849 Patent”) was duly and legally issued to the applicant/inventor L. Gabriel Smith by the United States Patent and Trademark Office based on Application Number 13/553,310. A true and correct copy of the ’849 Patent is attached as Exhibit A to the Complaint.

7. The application for the ’849 Patent is a continuation of Parent Number 13/351,345, filed on January 17, 2012, which is a continuation of Parent Number 12/902,577,

filed on October 12, 2010, which claims priority from Provisional Application 61/360,002, filed on June 30, 2010.

8. By an assignment from L. Gabriel Smith to Guitar Apprentice, Guitar Apprentice currently owns and holds all right, title, and interest in and to the '849 Patent.

9. The '849 Patent is valid and enforceable.

10. The '849 Patent is entitled "Media System and Method of Progressive Instruction in the Playing of a Guitar Based on User Proficiency." The '849 Patent discloses and claims systems and methods related to musical instruction.

11. The technology disclosed by the various embodiments of the '849 Patent provide for a progressive musical instruction system and method whereby display images corresponding to a musical performance (e.g., a song) prompt a user to play a guitar during defined segments (e.g., notes or chords) within a musical performance, and the user learns to play the musical instrument by playing a gradually increasing number of segments within the musical performance.

12. Additionally, as a user successfully performs segments of a musical performance, the method and/or system as disclosed in the '849 Patent can respond and provide for an increase in the number of segments to be played by the user.

13. An embodiment of the '849 Patent can include a media system that uses a video game console and game disc (e.g., PlayStation® 3 and Blu-ray DiscTM) with software that directs audio signals of a musical performance containing at least one guitar, at least one segment in which the user is instructed to play, and segments that contain at least one note or chord.

14. The system of the '849 Patent described in the preceding paragraphs can include the generation of display images that correspond one or more notes or chords of the musical

performance; the display images can provide instruction to the user by graphically representing which guitar strings and frets are to be engaged by the user and can prompt the user to play the associated notes or chords during the segments to be played by the user.

15. Additionally, the system of the '849 Patent described in the preceding paragraphs can increase the number of segments the user is to play in subsequent iterations of the musical performance based on the proficiency level of the user, wherein the system determines the proficiency level in accordance with signals received electrically from the guitar played by the user in relation to display images generated during segments that prompted the user to play in a previous iteration of the musical performance.

Ubisoft's Infringing Product

16. Ubisoft is distributing and will continue to distribute, sell and/or offer to sell products that infringe Guitar Apprentice's '849 Patent.

17. Upon information and belief, the infringing products include the RocksmithTM game ("Rocksmith") and the Rocksmith® 2014 game ("Rocksmith 2014") in all versions, including all released and unreleased versions (individually or collectively "the Rocksmith game"). *See* Screenshot of Rocksmith Website under "Order Now" Menu, hereinafter "Exhibit B," (listing Rocksmith, Rocksmith Guitar and Bass, and Rocksmith 2014 as separate products).

18. The Rocksmith game is available on the PlayStation® 3 and the Xbox 360® video game consoles as well as on the PC. *See* Exhibit B.¹

19. Ubisoft advertised and continues to advertise the Rocksmith game for commercial use on the Rocksmith website. *See* Exhibit B.

¹ All screenshots from the Rocksmith website represent how the website appeared on June 24, 2013.

20. Ubisoft's advertisements include touting the game as the "fastest way to learn guitar" and describes Rocksmith as a progressive instruction for playing guitar. *See* Screenshot from Rocksmith Website under "Why It Works" Menu, hereinafter "Exhibit H," (explaining that the Rocksmith game becomes "your personal teacher as [Rocksmith] monitors how you play, dynamically adjust the difficulty to your skill level, then slowly introduces more notes and phrases until you're playing your favorite songs note-for-note").

21. Ubisoft distributed and sold and continues to distribute and sell the Rocksmith game to retail stores for third parties to buy and play the Rocksmith game. *See* Exhibit B.

22. The Rocksmith game allows a user to plug a guitar into the PlayStation® 3, Xbox 360®, or the PC. *See* Exhibit C, Screenshot from Rocksmith Website of "Rocksmith Real Tone Cable", and Exhibit D, Screenshot from Rocksmith Website Showing the Connection of the User's Guitar to a PlayStation® 3.

23. The Rocksmith game has multiple musical performances, all of which contain at least one guitar, at least one segment in which the user is instructed to play, and at least one note or chord in a segment the user is instructed to play.

24. The Rocksmith game provides musical instruction through the use of display images that prompt a user to play notes or chords corresponding to a musical performance. *See* Exhibit E, Screenshot of Rocksmith Gameplay – Notes and Chords.²

25. The display images prompting the user to play notes or chords in the Rocksmith game are graphical representations of which guitar strings and which frets are to be engaged by the user and prompt the user to play during the corresponding segment. *See* Exhibit F, Transcript

² All screenshots from Rocksmith depict actual gameplay from a legally purchased PlayStation® 3 version of Rocksmith. All screenshots from Rocksmith 2014 depict actual gameplay from a legally purchased Xbox 360® version of Rocksmith 2014.

and Associated Screenshots from Rocksmith Gameplay – Initial Instruction Video.

26. The Rocksmith game compares the electric signal of the user’s guitar in relation to the notes or chords the user is prompted to play and uses this comparison to formulate a proficiency level of the user. Exhibit G, Forum Post by “Rocksmith Game Designer” Explaining a Proficiency Determination (“The expected time the system is looking for your note to be played is based on when the game expects the visual notehead to reach the ‘on screen’ strings, and then adjusted by the lag correction.”)

27. The Rocksmith game provides progressive musical instruction based on the user’s proficiency level, which can allow a user to progress from single notes to complex chords and can also increase the number of segments to be played by the user in a musical performance upon the successful completion of previous notes. *See* Exhibit H (explaining that Rocksmith “. . . dynamically adjusts the difficulty to your skill level, then slowly introduces more notes and phrases . . .”); *see also* Exhibit I, Excerpts from the Rocksmith User Manual for the PlayStation® 3, and Exhibit J, Screenshots of Rocksmith Gameplay – Demonstrating One Portion of a Musical Performance and the Possible Segments Prompting the User to Play.

COUNT I – PATENT INFRINGEMENT OF THE ’849 PATENT

28. Guitar Apprentice hereby re-alleges and incorporates by reference the allegations of paragraphs 1 through 27 of this Complaint.

29. Upon information and belief, Ubisoft is directly infringing and will continue to directly infringe one or more claims of the ’849 Patent under 35 U.S.C. § 271(a) by making, using, importing, offering for sale, and/or selling products that practice the claims of the ’849 Patent, including but not limited to the Rocksmith game.

30. Alternatively, Ubisoft’s infringing activities constitute direct infringement under

the doctrine of equivalents under 35 U.S.C. § 271(a).

31. Upon information and belief, Ubisoft is indirectly infringing and will continue to indirectly infringe the '849 Patent under 35 U.S.C. § 271(b) by actively inducing users to infringe the '849 Patent.

32. Upon information and belief, the users of Ubisoft's Rocksmith game are directly infringing the '849 Patent by performing in the United States each step of the methods of one or more claims of Guitar Apprentice's '849 Patent.

33. Upon information and belief, Ubisoft will upon obtaining knowledge of the '849 Patent, and with the intent to induce infringement, actively induce users of the Rocksmith game to directly infringe one or more of the method claims of the '849 Patent

34. Upon information and belief, Ubisoft is further indirectly infringing the '849 Patent under 35 U.S.C. § 271(c) by knowingly offering to sell or selling the Rocksmith game that is especially made or especially adapted for use as claimed in the '849 Patent, the game not being a staple article or commodity of commerce suitable for substantial non-infringing uses.

35. Upon information and belief, Ubisoft will continue to contributorily infringe the '849 Patent unless enjoined by this Court.

36. Alternatively, Ubisoft's infringing activities constitute indirect infringement under the doctrine of equivalents under 35 U.S.C. §§ 271(b) and 271 (c).

37. Ubisoft's making, using, offering for sale, and/or selling of the Rocksmith game is without consent, authority, or license from Guitar Apprentice.

38. Ubisoft will continue literally or under the doctrine of equivalents, to directly infringe, induce others to infringe, or contribute to the infringement of one or more claims of the '849 Patent unless enjoined by this Court.

39. Ubisoft is and will continue to profit from its infringement of the '849 Patent, and Guitar Apprentice is and will continue to suffer damages for which it is entitled to relief under 35 U.S.C. § 284.

40. Unless the future occurrence of Ubisoft's actions is enjoined, Guitar Apprentice will suffer irreparable injury for which there is no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Guitar Apprentice respectfully prays for the following relief:

- A. That Ubisoft and all of its subsidiaries, affiliates, officers, agents, servants, employees, attorneys, and their heirs, successors, and assigns, and all persons acting in concert or participation with it and each of them, be immediately enjoined and restrained, preliminarily and permanently, without bond, from manufacturing, importing, distributing, selling, or offering for sale products manufactured that directly and/or indirectly infringe (literally or under the doctrine of equivalents) U.S. Patent No. 8,586,849;
- B. A determination that the '849 Patent is valid;
- C. A determination that Ubisoft has infringed and is infringing one or more claims of the '849 Patent;
- D. An award of damages suffered by Guitar Apprentice as a result of the conduct of Ubisoft complained of herein, including but not limited to damages for patent infringement pursuant to 35 U.S.C. § 284 in an amount to be determined at trial, but in no event less than a reasonable royalty for infringement of the '849 Patent;
- E. Prejudgment and post-judgment interest; and
- H. Such other, further, or different relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Guitar Apprentice, under Rule 38 of the Federal Rules of Civil Procedure, respectfully demands a trial by jury of any issues triable of right by a jury.

RESPECTFULLY SUBMITTED, this the 19th day of November, 2013.

Respectfully submitted,

/s/ John F. Triggs
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